

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW JERSEY
3 CIVIL ACTION NO. 83-2864-SA

4 ROSE D. CIPOLLONE & ANTONIO

5 CIPOLLONE, her husband,

6 Plaintiffs, Deposition of

7 LIGGETT GROUP INC., a Delaware HOWARD S.

8 Corporation; PHILIP MORRIS, GOLDFRACH

9 INCORPORATED, a Virginia

10 Corporation; LOEW'S THEATRES,

11 INC., a New York Corporation,

12 Defendants.
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14

15 TRANSCRIPT of testimony as
16 taken by and before Kelly L. Nelson, a Certified
17 Shorthand Reporter and Notary Public of the
18 State of Jersey, at the offices of Brown,
19 Connery, Kulp, Wille, Purnell & Greene, 518
20 Market Street, Camden, New Jersey, on April 25,
21 1984, commencing at 10:15 o'clock in the forenoon.

22 - - -
23 405 Northfield Avenue

24 West Orange, New Jersey 07052

25 201-731-9666

A P P E A R A N C E S:

BUDD, LARNER, KENT, GROSS, PICILLO &
ROSENBAUM

BY: ANTHONY J. CARUSO, ESQ.

For the Plaintiffs

WILENTZ, GOLDMAN & SPITZER

BY: PHILIP A. PAHIGIAN, ESQ.

For the Plaintiffs

SILLS, BECK, CUMMIS, ZUCKERMAN, RADIN &
TISCHMAN, P.A.

BY: STUART M. FEINBLATT, ESQ.

For the Defendant, Loew's Theatres, Inc.

GREENBAUM, GREENBAUM, ROWE, SMITH,
BERGSTEIN, YOHALEM & BRUCK

BY: ALAN S. NAAR, ESQ.

For the Defendant, Liggett Group, Inc.

SHOOK, HARDY & BACON

BY: ROBERT E. NORTHRIP, ESQ.

For the Defendant, Philip Morris, Inc.

1 BROWN, CONNERY, KULP, WILLE,

2 PURNELL & GREENE

3 BY: MICHAEL J. VASSALOTTI, ESQ.

4 For the Defendant, Philip Morris, Inc.

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I N D E XWITNESSPAGE

HOWARD S. GOLDFRACH

By Mr. Caruso

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1 HOWARD S. GOLDFRACH, having been
2 first duly sworn, was examined and testified as
3 follows:

4 EXAMINATION

5 BY MR. CARUSO:

6 Q. Mr. Goldfrach, my name is Tony Caruso.
7 I'm an attorney with the firm of Budd, Larner, Kent,
8 Gross, Picillo and Rosenbaum in Newark, New Jersey
9 and we're counsel for the plaintiff Rose Cipollone
10 and Antonio Cipollone.

11 Have you ever been deposed before, sir?

12 A. Excuse me?

13 Q. Have you ever been deposed before?

14 A. No, I haven't.

15 Q. The nature of today's proceeding is
16 basically quite simple. I'm here to ask you
17 questions. If I ask a question you don't understand
18 simply ask me to rephrase it. If your attorney
19 interjects an objection to any question I ask you,
20 don't speak, let your attorney put his objection on
21 the record.

22 Everything that you say is being taken
23 down and will eventually be transcribed by the young
24 lady sitting to your right. She's a court reporter.
25 Anything that is said by anybody in the room will be

1 transcribed, and could be used for or against you
2 at the time of trial and when I say you, I mean your
3 employer, subject to appropriate objections of
4 counsel at that time.

5 You have to understand that every
6 response you give has to be verbalized. A shrug of
7 the shoulders, nods of the head, I understand what
8 you're saying, everybody in the room understands
9 what you're saying, but the court reporter cannot
10 take down a shrug of the shoulders.

11 A. I understand.

12 Q. Okay. Have you ever testified before,
13 given sworn testimony before before any governmental
14 agency?

15 A. No, I haven't.

16 Q. Have you ever given any sworn statement
17 before?

18 A. No, I haven't. No.

19 Q. In writing?

20 A. No.

21 Q. Have you ever been asked to testify
22 before before any governmental agency?

23 A. No, sir.

24 Q. Have you ever been asked to give a sworn
25 statement of any kind before?

1 A. No.

2 Q. What's your date of birth, sir?

3 A. December 31, 1948.

4 Q. And where were you born?

5 A. Philadelphia.

6 Q. What was your father's name?

7 A. My father's name was Louis.

8 Q. And your mother's?

9 A. Sara.

10 Q. Maiden name?

11 A. Calin, C-a-l-i-n.

12 Q. Did anybody in either of your parent's
13 immediate family ever work in the field of
14 advertising or marketing?

15 A. No.

16 Q. Did anybody in either of your father or
17 mother's immediate family ever work for a tobacco
18 manufacturer?

19 A. No.

20 Q. Can you give me, sir, the benefit of your
21 educational background starting with high school?

22 A. High school in Central High School in
23 Philadelphia, graduate '66, B.A. in economics, Clark
24 University, graduate of '70, M.B.A. University of
25 Pennsylvania, '72, in marketing.

1 Q. I'm sorry. Did you say marketing, sir?

2 A. Yes.

3 Q. Can you tell me what your first full-time
4 employment was?

5 A. Executive trainee Supermarkets General
6 Corporation, 1972.

7 Q. Right out of --

8 A. Right out of school.

9 Q. -- your M.B.A program?

10 A. Um-hum.

11 Q. And in what capacity did you work there?

12 A. I was hired as an executive trainee.

13 Q. Which is?

14 A. Learning and rotating through the various
15 departments of the company.

16 Q. In your field of marketing?

17 A. As translated to their company. A certain part
18 of the time was in a store, for example, as an
19 Assistant Store Manager in their various buying
20 functions, little bit of time in their Advertising
21 Department, working in finance for awhile. It was
22 generally more of a management training program as
23 opposed to marketing training program.

24 Q. Can you for my own education, can you
25 give me a textbook or your textbook definition of

1 what marketing is?

2 A. My definition of marketing would be the process
3 by which various goods and services are first
4 identified to the public and then sold to the public.

5 Q. Would you encompass advertising under
6 your definition of marketing or would that be a
7 separate field?

8 A. Advertising is a part of marketing, yes, in my
9 opinion.

10 Q. How long were you with the Supermarket
11 General?

12 A. A little over three years.

13 Q. And where did you work out of if you had
14 a base as such?

15 A. Woodbridge, New Jersey.

16 Q. And was your job function essentially
17 that of an executive trainee for those three years
18 or did you at some point graduate so to speak from
19 the program?

20 A. I so to speak graduated from the program, yes.

21 Q. And how long was the program?

22 A. The program was I think around nine months.
23 Program was an abridged program. It was supposed to
24 be two years and lasted about nine months.

25 Q. And what were your job functions

1 subsequent to that?

2 A. Following that I became Manager of Consumer
3 Programs.

4 Q. Which means what?

5 A. Which in essence was responsible for a number
6 of programs that had to be implemented to either
7 comply with regulations or by which we just thought
8 would be beneficial. There are things like unit
9 pricing, freshness coding, seminars in nutrition
10 and things like that.

11 Q. When you say comply with regulations,
12 whose regulations, in-house or some outside entity?

13 A. A combination.

14 Q. Who would be --

15 A. And I was not responsible for determining --
16 you know, determining what compliance was. That was
17 a legal function, but I was directed as it were to
18 do various things and make things happen for the
19 company.

20 Q. Okay. And how long did you serve in that
21 job function?

22 A. About a year and a half.

23 Q. Did you have any other job function at
24 Supermarket General before you moved on?

25 A. Yeah. I became the Assistant Brand Manager for

1 the Pathmark brand.

2 Q. Assistant Brand Manager for Pathmark?

3 A. Yes, for the Pathmark brand.

4 Q. And what did that job entail?

5 A. Basically firefighting, Pathmark at that time
6 had about 17 or 1800 line items under its own name
7 and what the job really was while I was working for
8 the Manager was to determine the continued viability
9 or the various opportunities for Pathmark to enter a
10 given product category with its own brand of
11 products to develop packaging pricing strategies,
12 and to liaise with various buying groups, packaging
13 groups advertising etc., to make consumers aware of
14 the products, make sure they were competitively
15 priced.

16 Q. Your role as Assistant Brand Manager
17 seems to be much more consistent with your
18 educational background in marketing from University
19 of Pennsylvania, would you agree?

20 A. No.

21 Q. And why not?

22 A. As classically defined I would agree, yes, but
23 based on my definition of marketing, which is
24 strictly my own, it's the total process, and to that
25 extent, I viewed my initial experience at Pathmark

1 as training for what happens in a retailing
2 environment for why, for example, a retailer would
3 take product A as opposed to product B.

4 Q. In any of your positions while you were
5 with Supermarket General, did you ever have to deal
6 with the placing of a health warning label on any of
7 the products?

8 A. No.

9 Q. After your work with Supermarket General
10 where did you go?

11 A. Philip Morris.

12 Q. And what year?

13 A. 1975.

14 Q. In what capacity were you hired by Philip
15 Morris?

16 A. I was hired as Manager of Supermarket Programs.

17 Q. And what was your job function in that
18 capacity?

19 A. As the title implies, it was the function of
20 primarily developing programs that would work in the
21 supermarket class of trade, and it was primarily
22 involved with creating sufficient inventory space
23 for Philip Morris products and for communicating
24 financial benefits as it were, of giving us more
25 space in marketing our products appropriately. It

1 included a certain amounts of trade relations and
2 certain amount of liaison activities with our field
3 salespeople.

4 MR. CARUSO: Can you read that answer back
5 for me.

6 (The record is read back as requested.)

7 Q. Can you explain to me what you mean by
8 developing programs?

9 A. Sure. For example, a program was developed
10 whereby Philip Morris would pay various amounts of
11 money for various percentages of space for our
12 products on a cigarette carton rack.

13 Q. I'm sorry. I just didn't hear -- you
14 trailed off right at the end. On a cigarette?

15 A. Carton rack. In a supermarket.

16 Q. And how would that be determined? How
17 would a program be developed? What would be the
18 first step?

19 A. First step would be analysis of our current
20 situation, where we are currently.

21 Q. When you say we --

22 A. Philip Morris was currently in a supermarket.
23 What percentage of inventory, what number of rows or
24 facings Philip Morris products currently had, what
25 percentage of space competitor products had, what

1 inventory levels were generally, how they related to
2 volume levels in the store, and what our needs were
3 currently and what they'd be projected to be for the
4 next couple of years.

5 Q. How was all this ascertained?

6 A. Through a lot of work.

7 Q. That's simply stated. A lot of work by
8 whom?

9 A. A lot of work by myself, by salespeople, by
10 some of our management information services people
11 in compiling data.

12 Q. What about outside entities?

13 A. No.

14 Q. As Manager of Supermarket Programs, did
15 you have a staff below you?

16 A. No.

17 Q. What division or who was your employer at
18 that time? Was it Philip Morris Inc. --

19 A. Philip Morris USA.

20 Q. -- who was your employer? And what is
21 Philip Morris USA vis a vie Philip Morris Inc.? A.
22 Philip Morris USA is a division of Philip Morris,
23 Inc. and actually he -- I spoke incorrectly. My
24 employer was and is Philip Morris Inc.

25 Q. Oh, okay. So essentially, you were

1 employed by Philip Morris Inc. and assigned to the
2 Philip Morris USA division?

3 A. Essentially.

4 Q. What was the function of the Philip
5 Morris USA division? What did they do?

6 A. They marketed and -- manufactured and marketed
7 tobacco products, cigarettes.

8 Q. Where, and when I say where, where did
9 they market them?

10 A. In the United States.

11 Q. Anywhere else in addition to the United
12 States?

13 A. No.

14 Q. Puerto Rico?

15 A. Quite frankly I'm not sure.

16 Q. If you don't know the answer to a
17 question simply say so.

18 When you came to Philip Morris USA, who
19 was your immediate supervisor? What department did
20 you work for?

21 A. I worked for Sales Planning.

22 Q. Am I using the word correctly when I
23 refer to it as a department?

24 A. Um-hum.

25 Q. Were there other departments in Philip

1 Morris USA?

2 A. Many.

3 Q. Can you tell me what they are?

4 A. I can try.

5 Q. That's all I can ask.

6 A. I'll probably forget some things. Sales
7 Planning, National Accounts, Merchandising Materials,
8 Brand Management. Obviously Sales, Marketing
9 Information Services, Finance, Production,
10 Manufacturing, Research and Development, Quality
11 Control, probably some more.

12 Q. Was there a Legal Department?

13 A. A legal, yes.

14 Q. Was there a Medical Department? Do you
15 know a -- and medical, maybe I'm using the word very
16 loosely. Strike that question.

17 Was there a department within Philip
18 Morris USA which dealt with the question of health
19 effects with cigarette smoking?

20 A. I have no idea.

21 Q. Was there a Science Department?

22 A. There was Research and Development.

23 Q. Was there a Public Relations Department?

24 A. At that time, I don't think USA had its own
25 P.R. Department, no, but I am not sure.

1 Q. Did there come a point in time when USA
2 did have its own Public Relations Department?

3 A. Yes.

4 Q. And when was that, if you recall?

5 A. I am not sure of the dates, I think perhaps '78
6 or '79.

7 Q. Thank you. Is it still in existence
8 today, do you know?

9 A. Yes.

10 Q. Did USA have a separate Advertising
11 Department?

12 A. We don't have a separate Advertising Department.

13 Q. At any time during your employment there,
14 in other words, from 1975, to the present, was there
15 an Advertising Department?

16 A. To my knowledge, no.

17 Q. Did Philip Morris Inc. have an
18 Advertising Department, if you know?

19 A. To my knowledge, no.

20 Q. Did Philip Morris USA retain outside
21 firms in the field of advertising?

22 A. Yes.

23 Q. You're going to have to --

24 MR. VASSALOTTI: No, go ahead.

25 Q. Can you tell me to your knowledge, what

1 firms, advertising firms, were retained by Philip
2 Morris USA in 1975?

3 MR. VASSALOTTI: All right. For the
4 record, I'd just like to pose an objection. We're
5 getting into the narrow area of marketing that was
6 dealt with by Judge Cowen and I think it's pretty
7 clear that the time period and brand limitations
8 that he set forth with regard to marketing that
9 apply to Philip Morris products cover the period I
10 think 1966 to 1974. And I'm going to object to any
11 questioning outside of that period. If you'd like
12 to ask the witness if he knows who was used during
13 that period for those brands, that's fine.

14 MR. CARUSO: I understand your objection.

15 MR. PAHIGIAN: That's a direction, right,
16 Mike? You're directing him not --

17 MR. VASSALOTTI: I just objected to it.

18 BY MR. CARUSO:

19 Q. Do you know the firm Burrell McBain in
20 Chicago?

21 A. No.

22 Q. McCann-Erickson Inc. in Milwaukee and
23 when I say know, what I'm asking you is, do any of
24 these firms as far as you know, have a relationship
25 with Philip Morris USA?

1 A. No.

2 Q. The Biow Company in New York City?

3 A. Excuse me?

4 Q. Biow Company, B-i-o-w?

5 A. No.

6 Q. The Albert Woodley Company, New York City?

7 A. No, and when I say no, I say I have no idea
8 whether they do or not. I've never heard of them.

9 MR. VASSALOTTI: Excuse me. Mr. Caruso,
10 are you asking these questions in connection with
11 the relevant time period, again?

12 MR. CARUSO: That's what I'm trying to
13 ascertain. If he says to me for example, yes I've
14 heard of the Biow Company, I can ask him, I assume,
15 in what context and I can further inquire as to
16 whether or not Biow had a relationship function with
17 Philip Morris USA or Philip Morris Inc. during the
18 years 1966 to 1974.

19 MR. VASSALOTTI: Why don't you just ask
20 him what advertising agencies he knew had a
21 relationship with Philip Morris between 1966 and
22 1974. Limited to the brands in question. I mean
23 you're going through a list of God knows how many ad
24 agencies.

25 MR. CARUSO: There's only a few more.

1 There's only a few more.

2 BY MR. CARUSO:

3 Q. Leo Burnett Company, Inc.?

4 A. Yes.

5 Q. Do you know if Leo Burnett Company Inc.
6 had a relationship with Philip Morris USA or Philip
7 Morris Inc. during the years 1966 to 1974?

8 A. Yes.

9 Q. Did they in fact have a relationship with
10 Philip Morris Inc. or Philip Morris USA during those
11 years?

12 A. Yes, they did.

13 Q. And with whom, Philip Morris Inc. or
14 Philip Morris USA?

15 A. With USA.

16 Q. And what was the nature of that
17 relationship if you know?

18 A. They were the agency of record for Virginia
19 Slims and Parliament.

20 Q. Were there any other agencies of record
21 during the year 1966 -- the years 1966 through 1974,
22 with respect to Virginia Slims or Parliament?

23 A. I don't think so.

24 Q. Were there any other firms perhaps not of
25 record, but which were consulted with respect to

1 Virginia Slims and Parliament during the years 1966
2 to 1974?

3 A. I have no idea.

4 MR. NORTHRIP: When convenient, Mr.
5 Caruso, could we take a break?

6 MR. CARUSO: No problem. Any time you
7 want to take a break, just say so.

8 THE WITNESS: I'd like to take a break.
9 (Brief recess.)

10 Q. Mr. Goldfrach, I earlier asked you to
11 give me in essence a list of various departments
12 within Philip Morris USA. When you responded to
13 that question, did you respond in terms of present
14 day, in terms of 1975 when you came there, or in
15 terms of 1966?

16 A. In terms of 1975. I have no idea what the
17 departments were in 1966.

18 Q. Do you know if the Sales Planning
19 Department existed in 1966?

20 A. I have no idea.

21 Q. Have you seen any records or documents of
22 any nature which would indicate to you that the
23 Sales Planning Department existed in 1966?

24 A. I've seen none.

25 Q. Do you know if the National Accounts

1 Department existed in 1966?

2 A. No.

3 Q. Have you seen any documents or records of
4 any nature which would indicate to you that it did?

5 A. I've seen none.

6 Q. I could go through the whole list of 10
7 or 12 or is your response going to be the same for
8 each --

9 A. Yes, it will be the same response.

10 Q. -- department? So you have no personal
11 knowledge nor have you seen any records or documents
12 of any nature which would indicate to you that any
13 of those 10, 11 or whatever departments you
14 enumerated for me earlier existed in 1966?

15 A. I have no personal knowledge and I've seen no
16 documentation to that effect.

17 Q. Who did you succeed in 1970 -- strike
18 that. That was a bad question.

19 What other positions have you held since
20 1975?

21 A. In I think 19 -- late '78 or '79, I moved over
22 to the brand group to become Assistant Brand Manager
23 of Benson and Hedges. After about two or three
24 months at that I became Assistant Brand Manager of
25 Merit. About six to nine months later, Assistant

1 Brand Manager of Marlboro, and right around 1980, I
2 think, although quite frankly I'm not sure, I think
3 it was about '80, it might have been a little later
4 on, '81, actually, I became the Brand Manager of
5 Parliament. Late in 1982, I became Brand Manager of
6 Virginia Slims and in January of this year I became
7 the Brand Manager of Merit.

8 Q. So your current position is Brand Manager,
9 Merit?

10 A. Um-hum.

11 Q. As Brand Manager of Virginia Slims, what
12 was your job responsibility?

13 A. It was the day to day management of the brand
14 which was primarily working with our advertising
15 agency with sales, and with marketing management to
16 recommend and put advertising works point of sales
17 materials, promotions for the brand.

18 It was primarily an executional
19 job.

20 Q. As Brand Manager of Virginia Slims, did
21 you have a staff?

22 A. Yes.

23 Q. And what department would this be?

24 A. The Brand Management.

25 Q. Okay. And how large was your staff, what

1 did it consist of?

2 A. An Assistant Brand Manager.

3 Q. No, as Brand Manager. I'm sorry.

4 A. The staff was an Assistant Brand Manager, and
5 two coordinators and two secretaries.

6 Q. When you become a Brand Manager for a
7 particular brand, i.e., Virginia Slims, do you
8 inherit custody, control or possession within your
9 department of documents relating to that brand?

10 MR. VASSALOTTI: Now is your question
11 directed to Mr. Goldfrach --

12 MR. CARUSO: Not personally obviously.

13 MR. VASSALOTTI: Then I'm going to object
14 to the question. If you want to ask him what he
15 inherited when he became Brand Manager of Virginia
16 Slims that's fine but your question is hypothetical.

17 MR. CARUSO: You're right.

18 Q. When you became Brand Manager?

19 A. I inherited one year's worth of Virginia Slims,
20 advertising, one year's worth of Virginia Slims,
21 various memos and communications.

22 Q. Do you know whether or not Philip Morris
23 USA has a document destruction program?

24 A. I know there is one. I'm not really totally
25 sure of all the specifics involved with it but I

1 know there's a document destruction program, yeah.

2 Q. Do you know what the length of time a
3 document is to be retained?

4 A. I'm not sure.

5 Q. Is it greater than a year?

6 A. I know that we keep as active files, in active
7 files, one year's worth of material and then
8 documents are sent to a storage facility where they
9 can be retrieved. I think they go as far as five
10 years. I don't think any longer than that.

11 Q. So documents older than a year you would
12 send to a storage facility?

13 A. Yes.

14 Q. And it's your recollection that they go
15 back approximately five years?

16 A. Approximately, perhaps less.

17 Q. Where is this storage facility?

18 A. It's in Carlstadt -- the bulk of it is
19 Carlstadt, New Jersey.

20 Q. Do you know the address?

21 A. No, I refer to it as Carlstadt.

22 Q. Is it a outside separate entity that
23 you're referring to or is it a building owned by
24 Philip Morris USA or Philip Morris Inc.?

25 A. It's a building that we operate. I don't know

1 whether we own it or.

2 Q. Okay. Do you know whether in fact there
3 are documents existing relating to Virginia Slims
4 which were older than one year when you took the
5 position as Brand Manager of Virginia Slims?

6 A. Quite frankly, no. I never -- the only way I
7 would know is if I were looking for something and
8 would request some information and I never had any
9 cause to do that.

10 Q. You never had any occasion to request any
11 documents older than one year which may have been
12 sent to storage?

13 A. No.

14 Q. You used the term active documents. Are
15 there inactive documents?

16 A. I guess --

17 MR. VASSALOTTI: Don't guess.

18 A. I'm not going to guess. Not really. I used
19 the term active and probably inappropriately. I
20 generally keep a year's worth of history and then
21 send them over -- send the documents over to
22 Carlstadt.

23 Q. Now, when you say you generally keep a
24 year's worth of history, is that your own personal
25 policy or is that a policy of Philip Morris USA or

1 Philip Morris Inc.?

2 A. I don't know whether it's a policy of Philip
3 Morris. I do it as a matter of course.

4 Q. Do you know when the brand Virginia Slims
5 was introduced?

6 A. 1968.

7 Q. How do you know that?

8 A. Because it's in -- it just -- we know that when
9 it was started and stuff like that, the little
10 history, it was introduced in '68, test marketed.

11 Q. Did somebody tell you that or did you see
12 that in a document?

13 A. I saw that in a document.

14 Q. When did you see that in a document, if
15 you recall? Was it prior to your taking over, as
16 Brand Manager for Virginia Slims?

17 A. I don't want to speculate as to exactly when I
18 saw it. I've seen it, I know it and I don't know
19 whether I know it through osmosis -- because that's
20 one of the things you get to be, you get to do when
21 you become a Brand Manager of a product, is find out
22 when it was introduced -- or when exactly I've seen
23 it but it's common knowledge.

24 Q. When you became Brand Manager of Virginia
25 Slims, did you familiarize yourself with that

1 brand's background and history?

2 A. In a very cursory sense, yes.

3 Q. How did you go about familiarizing
4 yourself with that brand's background and history in
5 a very cursory sense?

6 A. I looked at a couple of old ads, basically, and
7 I found out -- I got a promotion that had been
8 ongoing for a number of years that I was supposed to
9 maintain and look at some samples of the finished
10 promotion for continuity, and I reviewed about three
11 years of sales data.

12 Q. Other than the sales data were these
13 documents that you reviewed older than one year?

14 A. I didn't review documents per se. I
15 reviewed pieces, old advertising.

16 Q. I use the word documents loosely. When I
17 say documents I'll encompass it as any writing, any
18 film, any photographs, anything that you may have
19 referred to, anything tangible that you may have
20 referred to to familiarize yourself with the history
21 and background of Virginia Slims?

22 A. Yes, some were older than a year.

23 Q. The documents which were older than one
24 year, how did you obtain access to these documents
25 and where were they?

1 A. I saw them at our advertising agency, Leo
2 Burnett and that's where they were.

3 Q. Is it your testimony sir, that there does
4 not exist a file that you reviewed when you became
5 Brand Manager of Virginia Slim, which traced the
6 history and background including the introduction of
7 that brand on the market, that there is not a file
8 that exists today of that nature?

9 MR. VASSALOTTI: That he reviewed.

10 MR. CARUSO: That you reviewed.

11 A. That's my testimony, yes, absolutely.

12 Q. So if I understand your testimony, you
13 became Brand Manager of Virginia Slims and the only
14 thing you reviewed were certain various and sundry
15 documents out at Leo Burnett in Chicago, other than
16 sales records?

17 A. Correct.

18 Q. There are no documents that you know of
19 and this is a different question, in the possession,
20 custody or control of Philip Morris USA or Philip
21 Morris Inc., which relate to the introduction,
22 history and background of the brand Virginia Slims
23 that are older than one year?

24 A. At Philip Morris, there is -- there's a
25 function that just holds every advertisement that's

1 been run for all the brands, as a, I guess a library
2 as it were.

3 Q. When you say advertising are you talking
4 about the finished product, i.e., the pages that I
5 would see in a magazine, or are you also referring
6 to the underlying documents which would -- the
7 underlying research which eventually led to the
8 advertisement?

9 A. I'm talking about the finished pieces at Philip
10 Morris. There may or may not be a number of
11 documents covering short pieces of time for Virginia
12 Slims. I have not seen them.

13 Q. Other than documents you may have seen at
14 Leo Burnett, and sales records which you've told me
15 you reviewed for approximately a three-year period
16 prior to your taking over as Brand Manager of
17 Virginia Slims line, is it your testimony that you
18 have not reviewed any documents whatsoever which
19 deal with the introduction, history and background
20 of Virginia Slims cigarettes?

21 A. Yes.

22 Q. And it's also your testimony that you do
23 not know that documents of that nature did not exist?

24 A. It is not my testimony that they don't exist,
25 it's my testimony that I don't know of their

1 existence.

2 Q. Do you know --

3 A. And could not swear to that fact.

4 Q. Do you know of anyone who can tell me
5 whether or not as a matter of fact, such documents
6 do exist?

7 A. I've never discussed it with anybody so it
8 would be speculation on my part which would probably
9 be inappropriate.

10 Q. When you took over the Virginia Slim
11 line, or brand, what were its net sales, gross sales?

12 MR. VASSALOTTI: I'm going to object to
13 the question.

14 MR. CARUSO: We'll go back to -- I'm
15 sorry.

16 Q. You reviewed sales records for three
17 years. What were the sales records for 19 -- strike
18 that.

19 Do you know what the sales records were
20 for Virginia Slims from 1966 or -- I'm sorry, 1968
21 through to the time you took over as the Manager of
22 the brand?

23 A. Can I cite them for you now?

24 Q. No, no, I'm just asking. Did you ever
25 review something like that?

1 A. In terms of dollar sales, never.

2 Q. Did you ever trace -- when you say in
3 terms of dollar sales, is there another way you
4 would look at such?

5 A. Units sold, share of market.

6 Q. Did you look at such information, units
7 sold and share of the market?

8 MR. VASSALOTTI: Again, for what time
9 period?

10 MR. CARUSO: From the introduction of the
11 brand through 1974.

12 MR. VASSALOTTI: Well, Mr. Cipollone
13 stopped smoking Virginia Slims in 1972.

14 MR. CARUSO: 1972.

15 A. Quite frankly, no.

16 Q. You have to bear with me on this but I
17 just find it somewhat surprising that somebody would
18 take over Manager of a brand such as Virginia Slims,
19 which does millions and millions and millions of
20 dollars worth of business every year and did
21 millions and millions and millions of dollars every
22 year and --

23 MR. VASSALOTTI: Is this a question or a
24 statement?

25 Q. And you did not familiarize yourself in

1 any way or respect other than looking at some
2 documents at Leo Burnett about this product line. I
3 mean is that unusual?

4 A. Sales --

5 MR. VASSALOTTI: Wait a minute, Mr.
6 Goldfrach.

7 Q. That makes it a question, is that unusual?

8 MR. VASSALOTTI: I object to the question
9 and instruct him not to answer as being entirely
10 argumentative and inappropriate. If you want to ask
11 a question ask a question. Don't make a speech.

12 MR. NAAR: I'll also object on the basis
13 that I don't know about millions and millions and
14 millions and millions or what that comes from. On
15 that basis, I'll voice my objection as well.

16 BY MR. CARUSO:

17 Q. What'd you do your first day on the job
18 as Brand Manager of Virginia Slims, do you remember?

19 A. Yes. I do. I remember I had some meetings
20 with ad agency.

21 Q. What ad agency?

22 A. Leo Burnett.

23 Q. Who'd you meet with?

24 A. Paul Driggs.

25 MR. PAHIGIAN: Spell it?

1 A. D-r-i-g-g-s. Concerning status of current
2 projects.

3 Q. That include Virginia Slims projects?

4 A. Current Virginia Slims projects, yes and I
5 reviewed the project internally of some promotions
6 and some pieces of advertising that were scheduled
7 to run or we needed to make sure happened and so
8 where they were. I also obviously said hello to my
9 staff, that would be a nice thing to do.

10 Q. I asked you about documents which you may
11 have reviewed. And you referred me to documents
12 which you said you reviewed which were in the
13 custody of Leo Burnett.

14 A. Um-hum.

15 Q. Were any of those documents, did any of
16 those documents describe the introduction or history
17 of Virginia Slims? In other words, were any of
18 those documents, did they date back to '66, '67,
19 '68, '69, '70, '71 or '72?

20 A. No, no.

21 Q. Did you speak with anyone prior to your
22 taking over the Virginia Slim line, regarding the
23 Virginia Slim line, its introduction, its history,
24 its background?

25 A. No.

1 Q. After you took over the Virginia Slim
2 line, as brand manager, did you speak with anybody
3 about its introduction, its history, its background?

4 MR. NAAR: Other than what he's already
5 testified to.

6 MR. CARUSO: Excuse me?

7 MR. NAAR: You're talking about what
8 other than what he's testified to.

9 MR. CARUSO: He hasn't been asked this
10 question before.

11 MR. NAAR: Well, he mentioned that he
12 had a meeting with Leo Burnett concerning current
13 projects.

14 MR. CARUSO: Current projects. I said
15 the history, the background and the introduction. I
16 think that's different than current projects.
17 Whatever. Go ahead.

18 THE WITNESS: I'm trying to think.

19 MR. VASSALOTTI: If you know, Mr.
20 Goldfrach, or if you recall.

21 THE WITNESS: Yeah, I understand.

22 A. I don't recall.

23 Q. In your experience as Brand Manager for
24 the Virginia Slim line, did you ever come across any
25 individual who was for lack of a better word, the

1 historian, the guru for the Virginia Slim line?

2 A. I don't think there is a guru for the Virginia
3 Slim line.

4 Q. Is there anyone at Philip Morris USA or
5 Philip Morris Inc. who can tell me about the
6 introduction of the Virginia Slims line, who can
7 tell me about the history, the background?

8 A. I'm not sure.

9 Q. Is there anyone at Philip Morris who as
10 far as you know, was employed in 1966,
11 '67, '68, '69, '70, '71 or '72, and worked with
12 Virginia Slims?

13 MR. VASSALOTTI: In what capacity?

14 MR. CARUSO: Any capacity.

15 A. I don't know for a fact.

16 Q. Who did you succeed if anyone, in your
17 job position? Who was the prior Brand Manager for
18 Virginia Slims?

19 A. Lawrence Wilson.

20 Q. Do you know how long Lawrence Wilson held
21 that position of Brand Manager for Virginia Slims?

22 A. I'm not sure, probably a year and a half.

23 Q. Do you know who his predecessor was?

24 A. Bob Roper.

25 MR. PAHIGIAN: Spell it?

1 A. R-o-p-e-r.

2 Q. Do you know how long Mr. Roper held that
3 position?

4 A. I don't remember.

5 Q. Approximately.

6 A. Approximately I guess a year and a half.

7 Q. Do you know who his predecessor was?

8 A. I'm not sure. Could have been one of them.
9 I'm not sure.

10 Q. Do you have any idea? In other words, it
11 may have been --

12 MR. VASSALOTTI: Well, I'm not going to
13 allow him to speculate or guess.

14 MR. CARUSO: He's not guessing.

15 MR. VASSALOTTI: He just said he doesn't
16 know.

17 MR. CARUSO: He said he's not sure.
18 There's a distinct difference.

19 Q. Who may have been --

20 MR. VASSALOTTI: I'm going to instruct him
21 not to answer who may have been. If he doesn't know
22 he doesn't know.

23 Q. Is it your answer that you don't know or
24 you have -- you have absolutely no idea who his
25 successor was, his predecessor was?

1 MR. CARUSO: Off the record.

2 (Discussion off the record.)

3 A. It's -- it was either Richard Sterling --

4 Q. Sterling?

5 A. S-t-e-r-l-i-n-g. William Cutler, C-u-t-l-e-r.

6 Q. Regardless of the sequence, was at any
7 point in time, Mr. Sterling a Brand Manager for
8 Virginia Slims?

9 A. Yes.

10 Q. The same question for Mr. Cutler.

11 A. Yes.

12 Q. Do you know of any other Brand Managers
13 for Virginia Slims?

14 A. Yes.

15 Q. Can you tell me their names?

16 A. Thomas Keim, K-e-i-m, Ellen Merlo, M-e-r-l-o.
17 I think that's it.

18 Q. Do you know who the first Brand Manager
19 was?

20 A. No.

21 Q. I assume then it was none of these
22 individuals you tell me whose names you gave me?

23 A. I don't know.

24 Q. Do you know if any of these individuals
25 were the Brand Manager in either 1968, '69, '70, '71

1 or '72?

2 A. I don't know.

3 Q. Now, you tell me that as a Brand Manager
4 you had an Assistant Brand Manager?

5 A. Yes.

6 Q. Is that custom in Philip Morris USA?
7 Does every Brand Manager be it for Virginia Slims or
8 some other brands have an Assistant Brand Manager?

9 A. Depends on the size of the brand and the
10 activity on the brand.

11 Q. Do you know if the individuals whose
12 names you just gave me had Assistant Brand Managers?
13 In other words, would Virginia Slims have been large
14 enough to mandate an Assistant Brand Manager also?

15 A. I don't think so.

16 Q. Do you know of any -- can you give me any
17 other names of anybody that you know who was
18 associated in any way with the Virginia Slims line
19 in a managerial capacity with the caveat, obviously,
20 that Brand Manager is a managerial position,
21 Assistant Brand Manager?

22 A. No.

23 Q. Can you approximate -- is Mr. Wilson
24 still with the company?

25 A. Yes, he is.

1 Q. Can you approximate for me how long he's
2 been with Philip Morris and you know, in all
3 sincerity, what I'm looking for is 10 years, 20
4 years, 30 years?

5 A. It's well under 10 years. I don't know. I
6 think it's five or six years.

7 Q. Mr. Sterling?

8 A. I think 10 years.

9 Q. Mr. Roper?

10 A. Under 10, maybe seven.

11 Q. Mr. Cutler?

12 A. I'm not sure. I think 10.

13 Q. Mr. Keim?

14 A. 10 or 12.

15 Q. Ellen Merlo?

16 A. I think about 12 -- excuse me, about 12 years.

17 Q. Earlier you mentioned the name of Mr.
18 Driggs from Leo Burnett. What is his position with
19 Leo Burnett? Was he the Account Manager for
20 Virginia Slims?

21 A. He is the Account Supervisor for Virginia Slims.

22 Q. Are there other individuals at Leo
23 Burnett who are involved with the Virginia Slims
24 line?

25 MR. VASSALOTTI: Are you going to ask it --

1 MR. CARUSO: During the relevant time
2 period, if you know.

3 MR. VASSALOTTI: The time period --

4 A. I don't know. Oh, '68 to '72?

5 MR. VASSALOTTI: Yes.

6 A. I don't know whether he was even associated
7 with the brand then. I have no idea. I was
8 speaking for the present.

9 Q. When you took over the brand as Brand
10 Manager, was it 1980 approximately? '81?

11 A. No, it was '82.

12 Q. '82. When you took over as Brand
13 Manager, did you meet with any other individuals
14 other than Mr. Driggs at Leo Burnett who may have
15 worked on the Virginia Slims account?

16 A. Who may have worked on.

17 Q. Or who was in fact working on the
18 Virginia Slims account?

19 A. At that time?

20 Q. Yes.

21 A. Oh, yes.

22 Q. And can you tell me who they were?

23 MR. VASSALOTTI: Well, I'm going to
24 object to the question. It's way outside of the
25 relevant time period.

1 MR. CARUSO: Maybe, maybe not. I mean the
2 only way -- if he tells me, Mr. Vassalotti, I met
3 with a Mr. Vassalotti and I go and I depose Mr.
4 Vassalotti and Mr. Vassalotti says I've been with
5 Leo Burnett since 1952 and I was on the Virginia
6 Slims account in 1967 then it's certainly relevant.

7 MR. VASSALOTTI: Well, rather than go
8 through however many names there might be, depose
9 all these people, it would probably be more
10 appropriate if you ask the witness if he knows of
11 anybody that was there back then. You may have
12 already asked him that, and then take it from there
13 in terms of any names that he gives you or --

14 MR. PAHIGIAN: Mike, I think he's already
15 testified -- I think he's testified, that he didn't
16 know, he does not now know of anyone who was at
17 Burnett during the relevant time period who worked
18 on the Virginia Slims line. I believe that's your
19 testimony. What we're trying to do here we're
20 trying to avoid unnecessary delay in getting what we
21 consider to be relevant information or we can do
22 this forever and we can bother Judge Cowen forever
23 and our position essentially is this.

24 If we can find out who was on the
25 Virginia Slims line at Leo Burnett in 1982 then

1 we're going to be able to trace back through that ad
2 agency who was on Virginia Slims prior to that. I
3 don't think there's anything wrong with that and I
4 don't think Judge Cowen contemplated that we
5 wouldn't be able to do that.

6 MR. VASSALOTTI: All right. We'll let
7 the objection stand and we'll let him answer.

8 MR. PAHIGIAN: Thank you. Thank you.

9 THE WITNESS: Can you repeat the question.
10 BY MR. CARUSO:

11 Q. The question was, do you know the names
12 of any other individuals who were in fact working on
13 the Virginia Slims account at Leo Burnett when you
14 took over as Brand Manager?

15 A. Ray Pokorni.

16 MR. PAHIGIAN: Give me the spelling.

17 A. P-o-k-o-r-n-i, Theo Carl, C-a-r-l, Linda
18 Reynolds, R-e-y-n-o-l-d-s, John Ward, W-a-r-d, Rob
19 Nolan, N-o-l-a-n. I think that's it.

20 Q. Do you know the name Ted Simon?

21 A. Yes.

22 Q. How do you know the name Ted Simon?

23 A. He became Account Executive on Virginia Slims I
24 guess six months ago, four months ago.

25 Q. For Leo Burnett?

1 A. For Leo Burnett.

2 Q. Peter Volz?

3 A. I know Peter Volz.

4 Q. How do you know Peter Volz?

5 A. He works for Leo Burnett.

6 Q. Do you know if Peter Volz was ever
7 affiliated with the Virginia Slims account?

8 A. I have no idea.

9 Q. William Engelbrecht?

10 A. I know, yes.

11 Q. How do you know William Engelbrecht? A.
12 He works for Leo Burnett.

13 Q. Do you know if Mr. Engelbrecht was
14 associated with the Virginia Slims line?

15 A. I don't.

16 MR. NORTHRIP: Let him finish the question
17 before you answer it.

18 Q. Hall Adams, Junior?

19 A. I know Cap, yes.

20 Q. In the same capacity as an employee of
21 Leo Burnett?

22 A. Yes.

23 Q. Do you know whether this person was ever
24 affiliated with the Virginia Slims account?

25 A. I don't know.

1 Q. Have you ever seen any documents dealing
2 with the specifics of Virginia Slims, dealing with --
3 and I'll preface my question, during the relevant
4 time period, dealing with the health label on the
5 package of cigarettes?

6 A. No.

7 Q. Have you ever had any conversations with
8 anybody at Philip Morris USA or Philip Morris Inc.
9 or Leo Burnett, dealing with the health label on
10 Virginia Slims cigarettes, again, during the
11 relevant time period?

12 A. No.

13 Q. Mr. Goldfrach, you earlier referred to
14 Leo Burnett as the agency of record. What do you
15 mean by of record?

16 A. They're Philip Morris's agency on Virginia
17 Slims.

18 Q. Are there any other agencies that you
19 know of which have dealt with the Virginia Slim
20 account outside of Philip Morris?

21 A. Yes.

22 Q. Can you tell me who they were?

23 A. There's a promotional agency, William A.
24 Robinson.

25 MR. PAHIGIAN: Inc.?

1 THE WITNESS: I have no idea.

2 MR. PAHIGIAN: That's a company name?

3 THE WITNESS: That's a company name.

4 Q. Do you know where they're out of?

5 A. Chicago.

6 Q. And what is their function?

7 A. They are a promotional agency, they don't do
8 advertising. They recommend to the company various
9 promotions that they think might make sense for
10 Virginia Slims, and I think also from time to time
11 have surveyed the field promotions and come in and
12 shown us a state of the art, here's what's happening
13 in the world kind of presentation.

14 MR. NAAR: Excuse me. Is this during the
15 relevant time period that we're talking about.

16 MR. CARUSO: I just asked him generally if
17 he knew of any other agencies in addition to Leo
18 Burnett.

19 MR. NAAR: I would certainly object to
20 any questions that are outside the relevant time
21 period.

22 MR. PAHIGIAN: I'm going to make a general
23 comment here and again it's with the idea of
24 expediting some of this discovery. We understand, I
25 think everybody understands, that the relevant

1 period for Virginia Slims is the period that Ms.
2 Cipollone smoked Virginia Slims but again in order
3 to get this information and move on, which I'm sure
4 all of us want to do, I think one of the best
5 tactics is to find out very briefly and very quickly
6 in the course of about half an hour what are the
7 various entities, who are the individuals that have
8 something to do with Virginia Slims right now and
9 then we can trace back. We can see if they had any
10 effort there.

11 Moreover, I think each of these
12 individuals that we name and each of the entities
13 that are named perhaps themselves might be familiar
14 with past practices, past advertisements, past
15 programs with respect to Virginia Slims so our goal
16 is to get the relevant information but we might
17 every now and then have to step outside that time
18 period to get there. All right?

19 MR. NORTHRIP: Let me simply say for the
20 record that the judge has ruled as to what is
21 appropriate discovery, and in order to expedite, we
22 have not objected and instructed not to answer in a
23 number of areas where I think such an objection and
24 instruction would have been appropriate. At the
25 appropriate time, we'll certainly come up with the

1 information you're seeking. Specifically, which is
2 who were the agencies, who did the promotions. I
3 think you're obviously entitled to that for the
4 relevant time period. Seems to me that the way
5 you're choosing to get it may be a little cumbersome
6 but again on a question by question basis, we'll,
7 where appropriate, object and not instruct the
8 answering where appropriate.

9 MR. PAHIGIAN: I understand fully
10 your position and I do appreciate the fact that
11 where the opportunity might have been ripe this
12 afternoon for an instruction not to answer you have
13 refrained from doing so. What I suggest, I don't
14 think this is going to be a very long deposition, is
15 that we just proceed along these lines and then we
16 can bring up in front of Judge Cowen whether he
17 thinks this procedure is proper. We can give him an
18 estimate of time and the reasons we think we have to
19 go outside that time period and you can voice your
20 objection and that might enlighten Judge Cowen as to
21 problems that might develop down the road. We
22 appreciate everyone's cooperation.

23 MR. CARUSO: Off the record.

24 (Discussion off the record.)

25 MR. PAHIGIAN: Okay, we're back on.

1 BY MR. CARUSO:

2 Q. Sir, do you know during the years '66
3 through '72, I believe -- let me paraphrase this.
4 My co-counselor here had said the relevant time
5 period was the time when Miss Cipollone smoked
6 cigarettes and actually the relevant time period is
7 two years prior to the date she started smoking. So
8 if she had started smoking in '68, the relevant time
9 period would be '66 through '72. Is that fair?

10 MR. NORTHRIP: That's correct, except
11 Virginia Slims really didn't get introduced in the
12 marketplace --

13 MR. CARUSO: Until '68.

14 Q. Do you know again during the relevant
15 time period, who the promotional agency was on the
16 Virginia Slims account?

17 A. No.

18 Q. You've distinguished between advertising
19 and advertising agency and promotional agency. Are
20 there any other agencies that Philip Morris USA,
21 would contract with to promote a particular brand or
22 to associate with a particular brand, to perform a
23 specific function?

24 A. Yes.

25 Q. And what would the general nature of

1 those firms be?

2 A. They would be Public Relations affiliates,
3 public relations agencies.

4 Q. Do you know if in fact this was done with
5 the Virginia Slims account during the relevant time
6 period?

7 A. I have no idea.

8 Q. Was it done during when you were Brand
9 Manager?

10 A. Yes.

11 Q. Do you know the name of the public
12 relations entity of the Virginia Slims account when
13 you were the Brand Manager?

14 A. I know that there were a number of them, and I
15 don't know the names. That was a part of marketing
16 that I was not responsible for.

17 Q. Do you know who would have been
18 responsible for that part of marketing?

19 A. Ellen Merlo.

20 Q. And in what department was Ellen Merlo at
21 the time?

22 A. Marketing and Communications.

23 Q. In addition to Advertising, Promotion,
24 Public Relations, are there any other outside
25 entities?

1 A. No.

2 Q. What is the --

3 A. Yes, excuse me. I'm sorry. Packaging Design.

4 Q. Do you know whether in fact during the
5 relevant time period there were public relations
6 firms affiliated with the Virginia Slims account?

7 A. I don't know.

8 Q. Do you know whether or not during the
9 relevant time period there were packaging and design
10 firms affiliated with the Virginia Slims account?

11 A. I don't know.

12 Q. When you were the Brand Manager of
13 Virginia Slims, was there a packaging and design
14 firm affiliated with that line?

15 MR. NAAR: Again, I just want to voice my
16 objection and note that there is an objection to
17 that line.

18 MR. CARUSO: You can have a continuing
19 objection to that. I realize some of the questions,
20 as this last one, is beyond the 19 --

21 MR. NAAR: As long as that's understood. I
22 just don't want to waive any objection.

23 MR. NORTHROP: We impose the same
24 continuing objection.

25 MR. CARUSO: Okay.

1 THE WITNESS: And I have no idea.

2 MR. PAHIGIAN: This is 1982 he asked.

3 THE WITNESS: I understand that.

4 BY MR. CARUSO:

5 Q. Tell me about a document repository in
6 Carlstadt. Do you know of any other document
7 repositories?

8 A. I know there's something at Philip Morris
9 called a Quick Retrieval System.

10 Q. Is it computerized?

11 A. I don't know. And I do not know whether those
12 documents are housed at Carlstadt or somewhere else.

13 Q. What kind of documents fall within the
14 parameters of the Quick Retrieval System?

15 A. Generally documents that while there might not
16 be filing space for in the office, you might want to
17 pull back and have easy access to.

18 Q. Would they be older than one year?

19 A. Most probably.

20 Q. Would it include current documents,
21 current i.e. activities as you used the word already?

22 A. Possibly, yeah.

23 Q. You said you didn't know whether or not
24 it was computerized. Do you know if these documents
25 are microfilmed or microfiched?

1 A. I don't know.

2 Q. Do you know the name of the individual
3 who's currently in charge of sales for Philip Morris
4 USA?

5 MR. CARUSO: Same objection.

6 MR. NAAR: Thank you.

7 A. Vince Buccellato. Let me write it so I can
8 spell it. B-u-c-c-e-l-l-a-t-o.

9 Q. Do you know what the function of the
10 Sales Department is?

11 A. Selling cigarettes is helpful, they're there to
12 sell cigarettes and to call on retail accounts, put
13 up promotional displays, make sure that Philip
14 Morris products are in distribution, that Philip
15 Morris, Philip Morris's various contracts with
16 various retail organizations are being adhered to,
17 etc.

18 Q. Would it be fair to assume that a sales
19 department was in existence during the relevant time
20 period with respect to Virginia Slims cigarettes?

21 MR. NAAR: I object.

22 MR. VASSALOTTI: Object to the form of the
23 question.

24 MR. NAAR: Likewise, I'll object to the
25 form of the question.

1 Q. Would that be a valid assumption?

2 A. I think so.

3 MR. VASSALOTTI: Go ahead.

4 A. Yeah, I think it's a valid assumption.

5 Q. Do you know the name of the individual
6 again with the assumption that such a department
7 existed, who may have been in charge of the
8 department during the relevant time period?

9 A. No.

10 Q. What is the function of Sales Planning as
11 you understand it?

12 A. When I was in that department, its function was
13 to develop programs that would help our sales force
14 achieve -- achieve distribution inventory levels,
15 and volume objectives with various trade classes.

16 Q. How would these programs be developed?

17 A. Through analysis of trade categories, their
18 profit structures, their sales patterns, analysis of
19 our internal sales objectives and trying to fit them
20 together to make sense.

21 Q. Would these analyses be performed in-house?

22 A. Yes.

23 Q. Would Philip Morris USA retain any
24 outside agencies to assist in the development of
25 these --

1 A. To my knowledge, no.

2 MR. VASSALOTTI: Let him finish.

3 THE WITNESS: I'm sorry.

4 Q. What's the function of the National
5 Accounts Department?

6 A. To call on national accounts, to make sales
7 calls on major trade accounts, to make presentations
8 to them and in essence, replicate the function of
9 the sales force except on a national level with
10 major retailers.

11 Q. What is the function of Merchandising
12 Material?

13 A: Merchandising Materials is in essence a
14 purchasing arm for Philip Morris. They're
15 responsible for contracting with various suppliers
16 of point of sale items, everything from clocks to
17 change mats, in-store point of sale items for
18 various brands.

19 Q. Would it include raw materials?

20 A. Excuse me?

21 Q. Would it include raw materials, i.e.,
22 tobacco or other ingredients?

23 A. No.

24 Q. What is the function of the Finance
25 Department?

1 A. Let me ask a question, if I can.

2 Q. Sure.

3 (Witness and counsel confer.)

4 MR. VASSALOTTI: Back on the record.

5 What's the relevance what the Finance Department
6 does or what the Merchandising Material Department
7 does or the National Accounts Department?

8 MR. CARUSO: That's the whole point.

9 That's what I want to find out and I can't determine
10 whether or not it's relevant unless I know what they
11 do.

12 MR. VASSALOTTI: Well, this witness
13 anyway, he I believe testified he didn't even know
14 if these were in existence during the relevant time
15 period. You're asking him questions about what they
16 do now. I certainly don't know what bearing that
17 has on relevant time period. And you fellows are
18 always concerned about moving along, and it just
19 seems to me to be nothing more than a fishing
20 expedition.

21 MR. CARUSO: Well, it's my understanding
22 from reading what I have seen on Judge Cowen's
23 rulings that he allowed questions into corporate
24 structure, corporate hierarchy, and there's various
25 ways to do it.

1 I mean I suppose I could sit here and ask
2 him today who was the CEO of Philip Morris Inc. and
3 work my way on down. I mean how many departments
4 are there, who does what, you know, I'm trying to
5 make it as easy as possible. He enumerated 10 or 12
6 various departments. I just want to know what as
7 far as this witness knows, what the function of the
8 various departments is.

9 MR. VASSALOTTI: To the extent he knows,
10 I suppose he can tell you but just for the record
11 we'll note an objection as to relevancy.

12 BY MR. CARUSO:

13 Q. As far as you know what is the function
14 of the Finance Department?

15 A. As far as I know it's to develop financial
16 controls for the corporation, to maximize cash flow
17 and utilization of capital.

18 Q. When you say the corporation, are you
19 referring to Philip Morris USA or Philip Morris Inc.,
20 if you know?

21 A. Philip Morris USA.

22 Q. What is the function of the Production
23 Department?

24 A. Make cigarettes.

25 Q. And was it production and manufacturing

1 or was that --

2 A. It's a defined. It's to produce cigarettes.

3 Q. What is the function of the Marketing
4 Information Services Department?

5 A. That's generally a sales staff function. They
6 are charged with responsibility for in essence,
7 collating, analyzing and reporting on data that each
8 of the Philip Morris sales reps sends in about
9 various accounts.

10 Q. What is the function of the Research and
11 Development Department?

12 A. Research and development and I really know very
13 little past that. I really know nothing past that.

14 Q. Do you know the name of the individual
15 who heads that department today?

16 A. No.

17 Q. What's the function of the Quality
18 Control Department?

19 A. Generally, it's to assure quality of our
20 products and establish standards of Philip Morris
21 products.

22 Q. When you say establish standards --

23 A. I can't get more specific. I really have
24 nothing to do with that department.

25 Q. I asked you earlier the names of the

1 heads of the Sale Department, Sales Planning. Can
2 you tell me who the head of the National Accounts
3 Department is today?

4 A. John Gillis, G-i-l-l-i-s.

5 Q. And you told -- I forgot Sales Planning.

6 A. There is no Sales Planning Department today.

7 Q. Merchandising Material. who is the head
8 of the department, if you know?

9 A. Bill Cutler.

10 Q. Brand Management, that would be specific
11 to each brand, I assume or is there a Brand Manager
12 for -- which oversees all of the various lines,
13 Virginia Slims, Benson and Hedges?

14 A. There are two group brand directors.

15 Q. And they are they?

16 A. One is Ellen Merlo and the other is Bob Roper.

17 Q. Finance?

18 A. Doug Nelson.

19 Q. Production and Manufacturing?

20 A. Don't know.

21 Q. Marketing Information Services?

22 A. John Paul JebLee, J-e-b-L-e-e.

23 Q. Research and Development?

24 A. I don't know.

25 Q. Quality Control?

1 A. I don't know.

2 Q. When did Sales Planning Department cease
3 to exist, do you know?

4 A. I think '79 or '80.

5 Q. Was the function of the Sales Planning
6 Department subsumed in another department?

7 A. Um-hum.

8 Q. And what department was that?

9 A. National accounts.

10 Q. Mr. Goldfrach, these 10 or so departments
11 that I've asked you questions about -- you have a
12 Sales Department. Within the Sales Department, are
13 there various subdepartments for each line of
14 cigarettes? In other words --

15 A. No.

16 Q. In Sales, is there?

17 A. No, there isn't.

18 Q. Okay. And would the same be true as to
19 each department that I asked you about?

20 A. Correct.

21 Q. When you were out at Leo Burnett, sir,
22 when you first took over as Brand Manager, you
23 indicated to me that you did review some documents.
24 Did you ever review any documents relating to brand
25 perception?

1 A. Could you better define that, please.

2 Q. I was hoping you would. Have you ever
3 seen any documents dealing with preference research?
4 Does the term mean anything to you?

5 A. Yeah. It means why would consumers prefer
6 Brand A over Brand B. I've seen research to that
7 end.

8 Q. Dealing with Virginia Slims?

9 A. Yes.

10 Q. And did you see this at Leo Burnett or
11 elsewhere?

12 A. I've seen that at Leo Burnett and I've seen
13 that at Philip Morris.

14 Q. Did you see this preference research for
15 the quote relevant time period, unquote?

16 A. No, I haven't.

17 Q. Do you have any personal knowledge as to
18 whether or not it exists?

19 A. I have no idea.

20 Q. Does the term or phrase perceptual
21 mapping research mean anything to you?

22 A. Yes.

23 Q. What does it mean?

24 A. It's a technique by which gaps in the
25 marketplace are identified, where new product

1 opportunities are identified. It is not a technique
2 to my knowledge that is used at Philip Morris.

3 Q. To your knowledge, was it ever used at
4 Philip Morris?

5 A. I don't know.

6 Q. Does the phrase market segmentation
7 research mean anything to you?

8 A. Yes.

9 Q. Can you tell me what it means to you?

10 A. Very simply it divides the market into various
11 segments based on geography, demographics, physical
12 characteristics of products.

13 Q. Have you ever seen any documents dealing
14 with market segmentation research relative to
15 Virginia Slims for the relevant time period?

16 A. No.

17 Q. Do you have any personal knowledge as to
18 whether such documents exist?

19 A. I have no knowledge.

20 Q. Does the phrase usage rate segmentation
21 research mean anything to you?

22 A. No.

23 Q. Does the phrase advertising copy tests
24 mean anything to you?

25 A. Sure.

1 Q. Can you tell me what it means?

2 A. Again, it's what it sounds like it is, you put
3 copy in front of consumers and see how they react to
4 it.

5 Q. Have you ever seen any documents related
6 to advertising copy tests with respect to Virginia
7 Slims for the relevant time period?

8 A. No.

9 Q. Do you have any personal knowledge as to
10 whether such documents exist?

11 A. No.

12 Q. Does the phrase test market studies mean
13 anything to you?

14 A. Yes.

15 Q. Can you tell me what it means?

16 A. In essence it's a test market situation. If
17 you have a new product or a line extension or a
18 reformulation or a change in one of the marketing
19 components of the product, you might elect to test
20 it first in a small part of the country, measure the
21 test, and based on results continue on a national
22 level or stop or reformulate or whatever.

23 Q. Have you ever seen any documents dealing
24 with test market studies for Virginia Slims during
25 the relevant time period?

1 A. No, I have not.

2 Q. Do you have any personal knowledge as to
3 whether or not such documents do in fact exist?

4 A. No, I don't.

5 Q. Does the phrase market plan mean anything
6 to you?

7 A. Yes.

8 Q. Can you tell me what it means?

9 A. It's a plan for marketing a product which
10 includes advertising, promotion, Manager level and
11 targets for volume.

12 Q. Have you ever seen any documents dealing
13 with market plans with respect to the Virginia Slim
14 line during the relevant time period?

15 A. No, I have not.

16 Q. Do you know whether in fact such
17 documents exist?

18 A. I have no idea.

19 Q. Does the phrase media plan mean anything
20 to you?

21 A. Yes, it does.

22 Q. Can you tell me what it means?

23 A. It's a plan for implementing various media on
24 the brand both in terms of scheduling and in terms
25 of media weight.

1 Q. Have you ever seen any documents dealing
2 with media plan for Virginia Slims during the
3 relevant time period?

4 A. No, I haven't.

5 Q. Do you know whether in fact such
6 documents exist?

7 A. I do not know.

8 Q. Does the phrase concept testing mean
9 anything to you?

10 A. Yes.

11 Q. Can you tell me what it means?

12 A. Concept testing is exposing a concept or a
13 multiple series of concepts to consumers. Usually
14 in very small groups.

15 Q. Have you seen any documents with respect
16 to concept testing in the Virginia Slims line during
17 the relevant time period?

18 A. No.

19 Q. Do you know whether in fact such
20 documents exist?

21 A. I don't know.

22 Q. Does the phrase copy platform mean
23 anything to you?

24 A. Yes.

25 Q. Can you tell me what it means?

1 A. Copy platform is a document which is usually a
2 short one or two paragraphs and expresses the
3 creative thrust of an advertising campaign.

4 Q. Have you ever reviewed any documents
5 dealing with the copy platform for the Virginia Slim
6 line which relate to the relevant time period?

7 A. No, I haven't.

8 Q. Do you know whether in fact such
9 documents exist?

10 A. I don't know.

11 Q. Sir, does the phrase brand name research
12 mean anything to you?

13 A. Yes, it does.

14 Q. Can you tell me what it means?

15 A. It's research into candidates to be brand names.

16 Q. Have you ever seen or reviewed any
17 documents dealing with brand naming research with
18 respect to the Virginia Slims line during the
19 relevant time period?

20 A. No, I haven't.

21 Q. Does the phrase packaging -- I'm sorry,
22 do you know whether or not such documents do in fact
23 exist?

24 A. No, I don't.

25 MR. NORTHRIP: Allow him to finish the

1 question.

2 Q. Does the phrase packaging research mean
3 anything to you?

4 A. Yes, it does.

5 Q. Can you tell me what it means?

6 A. It's putting a bunch of candidates for
7 packaging in front of consumers, usually in small
8 groups and determining which ones they like better
9 and which they like worse and why.

10 Q. Have you ever seen or reviewed any
11 documents dealing with packaging research with
12 respect to Virginia Slims that relate to the
13 relevant time period?

14 A. No, I have not.

15 Q. Do you know if whether in fact such
16 documents exist?

17 A. No, I don't.

18 Q. Does the phrase concept development plan
19 mean anything to you?

20 A. Not really.

21 MR. CARUSO: Off the record.

22 (Discussion off the record.)

23 Q. Did you say no it does not?

24 A. No, it does not mean anything.

25 Q. Does the phrase product market

1 development plan mean anything to you?

2 A. Yes, it does.

3 Q. Can you tell me what it means?

4 A. It's a plan for introduction either in tests or
5 in national form of a new product or a line
6 extension.

7 Q. Have you ever seen or reviewed any
8 documents dealing with the product market
9 development with respect to the Virginia Slim brand
10 that relate to the relevant time period?

11 A. No, I have not.

12 Q. Would you distinguish between advertising
13 test research and advertising copy research? Is
14 there a difference?

15 A. I'm not sure how to answer that. I'm not sure
16 how you're defining.

17 Q. Well, I earlier asked about advertising
18 tests.

19 A. No.

20 Q. Okay.

21 A. I don't feel a difference.

22 Q. Does the phrase brand or product
23 positioning study mean anything to you?

24 A. Yes, it does.

25 Q. And what does it mean?

1 A. It is a review and an analysis of how a
2 particular product is positioned in the marketplace.

3 Q. Have you ever seen or reviewed any
4 documents which relate to brand or product
5 positioning studies with respect to the Virginia
6 Slims line that relate to the relevant time period?

7 A. No, I have not.

8 Q. Do you know if whether in fact such
9 documents exist?

10 A. I do not know.

11 Q. Does the phrase motivation research mean
12 anything to you?

13 A. Yes, it does.

14 Q. Can you tell me what it means?

15 A. It's a study or series of studies into what
16 motivates consumers to buy one product over another.

17 Q. Have you ever reviewed or seen any
18 documents with respect to motivation research that
19 relate to the Virginia Slim brand during the
20 relevant time period?

21 A. No, I have not.

22 Q. Does the phrase main selling proposition
23 mean anything to you, m-a-i-n?

24 A. Yes, it does.

25 Q. Can you tell me what it means?

1 A. It's an advertising device to communicate a
2 single most important point of product
3 differentiation.

4 Q. Have you ever seen or reviewed any
5 documents dealing with motivation research with
6 respect to the Virginia Slim brand that relate to
7 the relevant time period?

8 A. No, I haven't.

9 Q. Do you know if whether in fact such
10 documents exist?

11 A. I do not.

12 Q. Does the phrase advertising theme mean
13 anything to you?

14 A. Yes.

15 Q. Can you tell me what it means?

16 A. It's the advertising campaign.

17 Q. Have you ever reviewed or seen any
18 documents relating to the advertising theme or
19 campaign that relate to the Virginia Slims brand for
20 the relevant time period?

21 A. No, I have not.

22 Q. Do you know if whether in fact such
23 documents exist?

24 A. I do not know.

25 Q. Sir, I asked you with respect to these 15

1 or 16 phrases whether or not you've seen documents
2 and whether or not you know whether in fact they
3 exist. Do you know whether in fact brand perception
4 or preference research was performed with respect to
5 the Virginia Slims line brand of cigarettes during
6 the relevant time period?

7 A. I do not know for a fact whether that was done
8 or not.

9 Q. Same question with respect to market
10 segmentation research?

11 A. The same answer. I do not know whether or not
12 it was done.

13 Q. Usage rate segmentation research, again,
14 same question.

15 A. Same answer.

16 Q. Advertising copy tests?

17 A. I have no idea whether it was done or not.

18 Q. Test market studies?

19 A. I don't know whether they've been done.

20 Q. Market plans?

21 A. Excuse me?

22 Q. Market plans?

23 A. I don't know whether they were created.

24 Q. Media plans?

25 A. I don't know whether they were done.

1 Q. Concept testing?

2 A. I don't know whether it was done.

3 Q. Copy platform?

4 A. I don't know whether it was created.

5 Q. Brand naming research?

6 A. I don't know whether it was ever done.

7 Q. Packaging research?

8 A. I don't know whether packaging research was
9 conducted.

10 Q. Concept development plan, do you know if
11 such was developed?

12 A. I have no knowledge.

13 Q. Product market development plan?

14 A. I have no knowledge of any such plans.

15 Q. Advertising copy research?

16 A. I have no knowledge of advertising copy
17 research.

18 Q. Brand or product positioning studies?

19 A. I have no knowledge of brand or product
20 positioning studies.

21 Q. Motivation research?

22 A. I have no knowledge of motivation research.

23 Q. Main selling propositions?

24 A. I have no knowledge of development of main
25 selling propositions.

1 Q. Advertising theme?

2 A. I don't want to mislead. Let me -- off the
3 record -- ask a question.

4 (The witness and counsel confer.)

5 MR. VASSALOTTI: What is the question again?

6 Q. Whether or not you know an advertising
7 theme was developed for the Virginia Slim line
8 during the relevant time period. I'd earlier asked
9 whether or not he had seen documents or reviewed
10 documents or whether in fact he knew they existed
11 and now I'm asking him whether or not he knows
12 regardless of the fact that he has not or has seen
13 documents, whether this was done.

14 (Witness and counsel confer.)

15 MR. VASSALOTTI: Answer to the best of
16 your ability, that's all.

17 A. An advertising theme had to be developed for
18 the brand during the time period, because the brand
19 was introduced during the time period.

20 MR. PAHIGIAN: Point of clarification.
21 Let's go off the record.

22 (Discussion off the record.)

23 MR. PAHIGIAN: Back on.

24 BY MR. CARUSO:

25 Q. Would be the same question with respect

1 to a media plan, do you know whether in fact such
2 was developed?

3 A. I don't know that one was developed, no.

4 MR. VASSALOTTI: As far as you know, to
5 the best of your knowledge.

6 Q. I seem to have left one out here. Have
7 you ever reviewed or seen any documents -- I'm sorry.
8 Let me start all over.

9 Does the phrase tracking study mean
10 anything to you?

11 A. Yes.

12 Q. Can you tell me what that means?

13 A. Tracking study is conducted by Philip Morris
14 annually, at least for the past five or six years,
15 which reviews the position of our cigarettes in the
16 marketplace in terms of smoker share demographics,
17 geographic concentration and also tracks competitive
18 cigarettes.

19 Q. Have you ever seen or reviewed any
20 documents that deal with tracking studies which may
21 have been performed regarding the Virginia Slims
22 brand for the relevant time period?

23 A. No, I have not.

24 Q. Do you know whether in fact such
25 documents do exist?

1 A. I do not know.

2 Q. Do you know whether a tracking study was
3 performed?

4 A. I won't speculate. I'm not sure.

5 Q. With respect to the various phrases I
6 just asked you about, various concepts, for the
7 relevant time period, can you tell me if I asked you,
8 if I went through the list again, can you tell me
9 who would know or who may have relevant knowledge
10 with respect to that time period for each of those
11 concepts?

12 A. No, I can't.

13 Q. And that would be true for each of the
14 concepts or phrases?

15 A. Yes, sir.

16 MR. CARUSO: Can you give me a couple
17 minutes.

18 MR. NORTHRIP: Why don't we take a break.

19 (Brief recess.)

20 Q. Sir, I had asked you about all these
21 concepts and phrases and again about 15 or 16 of
22 them, and with respect to the relevant time period
23 in the Virginia Slims. That's understood. And you
24 indicated to me that you do not know who would know
25 about -- for example, we'll start with brand

1 perception, who would know whether in fact such
2 research was undertaken for Virginia Slims during
3 the relevant time period.

4 Do you know who would know whether in
5 fact that was done?

6 A. I do not know who would know.

7 Q. Now, if you wanted to find out, how would
8 you go about finding out whether in fact it was done?
9 In other words, if you can't go to Mr. Vassalotti
10 and say do you know about this, and he says no,
11 what's your next step? What would you do?

12 A. I would probably go to our Research Department
13 and ask if they could find out.

14 Q. With respect to market segmentation
15 research, how would you go about finding out whether
16 in fact such research was performed?

17 A. Same answer.

18 Q. How would you go about finding out
19 whether usage rate segmentation research was
20 performed?

21 A. Same answer.

22 Q. How would you go about finding whether or
23 not advertising copy test research was performed?

24 A. Same answer.

25 Q. Test market studies?

1 A. Same answer.

2 Q. Market plans?

3 A. I'm not sure where I would go to for market
4 plans. I have no idea.

5 Q. Media plan?

6 A. Media Department and ask and assume very little
7 chance of success on finding an answer.

8 Q. Concept testing?

9 A. Research Department.

10 Q. Copy platform?

11 A. Leo Burnett.

12 Q. Brand naming research?

13 A. Research Department.

14 Q. Packaging research?

15 A. Research Department.

16 Q. Concept development?

17 A. I would probably check Research and Barnett.

18 Q. Product market development?

19 A. Research.

20 Q. Advertising copy?

21 A. Research and Leo Burnett.

22 Q. Brand or product positioning studies?

23 A. Research.

24 Q. Motivation research?

25 A. Research.

1 Q. Main selling proposition?

2 A. Leo Burnett.

3 Q. Advertising theme?

4 A. Leo Burnett.

5 Q. Media plan?

6 A. Media.

7 Q. Tracking studies?

8 A. Research.

9 Q. Once you went to Research, what would be
10 the mechanics of obtaining the information or
11 seeking to obtain the information? Would you speak
12 to somebody, would you sit down at a computer
13 terminal, what would be the mechanics?

14 A. I would speak to somebody.

15 MR. CARUSO: Off the record.

16 (Discussion off the record.)

17 Q. Who would you speak to at Research if you
18 wanted to trace the various concepts and plans that
19 we discussed?

20 A. John Zoler, Z-o-l-e-r.

21 Q. And what is Mr. Zoler's position in the
22 Research Department?

23 A. He is Director of Marketing Research.

24 Q. When you say Research, were you referring
25 to Marketing Research Department as opposed to R and

1 D?

2 A. Yes, sir.

3 Q. Marketing Research, my notes don't seem
4 to have it down as a separate department of Philip
5 Morris USA.

6 A. I apologize. I forgot to include it.

7 Q. Who is the head of the department today,
8 do you know?

9 A. John Zoler.

10 Q. Do you know whether in fact such a
11 department was in existence for the relevant time
12 period?

13 A. In fact, I do not know.

14 Q. Do you know during the time period when
15 you were Manager of the Virginia Slims brand, was
16 Virginia Slims sold outside the United States?

17 A. Yes.

18 MR. CARUSO: I assume you had the same
19 objection.

20 MR. VASSALOTTI: Yes.

21 Q. Do you know whether or not during the
22 relevant time period, Virginia Slims was sold
23 outside the United States?

24 A. I have no idea.

25 Q. Okay.

1 MR. CARUSO: Thank you. That's all I
2 have.

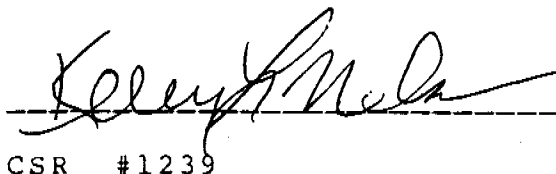
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C E R T I F I C A T E

I, Kelly L. Nelson, a Certified Shorthand Reporter and Notary Public of the State of New Jersey, do hereby certify that prior to the commencement of the examination, the witness and/or witnesses were sworn by me to testify to the truth, the whole truth and nothing but the truth.

I do further certify that the foregoing is a true and accurate computer-aided transcript of the testimony as taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

I do further certify that I am neither of counsel nor attorney for any party in this action that I am not interested in the event nor outcome of this litigation.



CSR #1239

Notary Public

My commission expires

August 17, 1986

Dated: 5/4/84